

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN  
&  
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WA.No. 986 of 2005

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AGAINST THE JUDGEMENT IN OP.5231/2002 Dated 31/01/2005

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APPELLANT: RESPONDENTS 1 TO 3 IN THE OP

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1. STATE OF KERALA, REPRESENTED BY  
THE SECRETARY TO GOVERNMENT, DEPARTMENT OF  
GENERAL EDUCATION, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.
2. DIRECTOR OF PUBLIC INSTRUCTION,  
THIRUVANANTHAPURAM.
3. THE DISTRICT EDUCATIONAL OFFICER,  
ALAPPUZHA.

BY GOVERNMENT PLEADER SRI K. SANDESH RAJ

RESPONDENTS: PETITIONER AND 3RD RESPONDENT IN THE OP

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1. G.SAJEEVAN, DRAWING TEACHER  
U.P.SECTION, LUTHERAN HIGH SCHOOL,  
SOUTH ARYAD, ALAPPUZHA DISTRICT.
2. THE CORPORATE MANAGER, LUTHERAN HIGH  
SCHOOLS, LUTHERAN CHURCH, KALUVETTAMKUZHY,  
VENGANNUR P.O., THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD  
ON 11/09/2007, THE COURT ON 19/09/2007 DELIVERED THE  
FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

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Writ Appeal No 986 of 2005  
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Dated: 19th September 2007

JUDGMENT

Radhakrishnan, J.

Original petition was preferred by the first respondent herein seeking a writ of certiorari to quash Ext. P4 and also for a declaration that the appointment given to him evidenced by Ext. P1 is in accordance with Rule 6B (2)(a) of Chapter XXIII of the Kerala Education Rules and the shifting of the teacher from the high school section is contrary to law and without the sanction under the Rules and for other consequential reliefs. Learned single judge allowed the writ petition and quashed Ext. P4 order holding that the provisions of Rule 6B(2)(a) of Chapter XXIII K.E.R would confer a right to the Manager to appoint the first respondent to the post of drawing teacher in the U.P. Section of the school. Aggrieved by the same this appeal has been preferred.

2. Sri K. Sandesh Raj, learned Government Pleader submitted that learned single judge has not properly appreciated the scope of Rule 6B(2)(a) and G.O.(Ms) No 104/69 dated 6.3.1969. Learned Government Pleader placed considerable reliance on the Division Bench decision of this court in Rani George v. Deputy Director of Education (2004 (1) KLT 460) and contended that the post of specialist teachers in U.P. Schools and High Schools are interchangeable.

3. Sri George Poonthottam, counsel appearing for the first respondent, on the other hand contended that the Manager has got a statutory right under Rule 6B(2)(a) to appoint one specialist teacher in the U.P. Section if the school is having effective strength of 500 students and on the basis of that statutory right Manager has appointed the first respondent.

4. We find it difficult to accept the contention of the first respondent. Facts of this case would clearly indicate that in the High School Section of the Lutheran school two specialist teachers were allowed to continue on protection during 2000-2001 as per proceeding dated 2.2.2001 of the Director of Public Instruction. The Director vide his letter dated 9.5.2001 had recommended to sanction a post of Drawing Teacher in the U.P section of the school as the effective strength of U.P section according to the staff fixation order for the year 2000-2001 was 511. One Suryakumari, Music

Teacher in the high school section was awaiting deployment to high school section in government schools and she was placed under protection as per G.O. (Ms) No 104/69 dated 6.3.1969 and hence the post of Music Teacher in the high school section was shifted to U.P section by the District Educational Officer in the staff fixation order for the year 2000-2001. Further one Anitha C. Tennison was working as Sewing Teacher in the high school section from 8.9.1993 onwards and she was allowed to continue in the school as protected Sewing Teacher. Thus when two protected teachers were working in the school the Manager had appointed the first respondent in the U.P section of the school which was found to be illegal in Ext. P4 order passed by the Government.

5. We fully endorse the principle laid down by the Division Bench of this court in Rani George's case, supra wherein it was clearly held that if the educational agency is having U.P school and a High School or a High School with U.P section in the same district both sections shall be treated as a single unit. The seniority of the specialist teachers working in such units shall be prepared in accordance with Rule 37 treating the above said U.P schools and High Schools as a single unit. The post of specialist teachers in the above said schools/sections are interchangeable. Therefore Ext. P4 order passed by the Government is perfectly in accordance with the

principle laid down in Rani George's case.

6. We may point out that Section 6 B (2)(a) of Chapter XXIII says that no post of specialist teacher shall be sanctioned in any category under clause (a) if a specialist teacher is already working in the upper primary school or upper primary section of the high school. Rule 6B only authorises sanction of the post. Rule 6B(2)(a) states that one post of specialist teacher will be sanctioned in each upper primary school or upper primary section of the high school having an effective strength of 500 pupils in the upper primary section, but nothing has been stated in the rules regarding the manner in which appointment is to be effected. If protected specialist teacher is available in the high school section of the same educational agency there is no reason why the teacher shall not be accommodated in the U.P section since the posts are interchangeable. Such a practice in our view would advance public interest and State will be relieved of the burden of paying salary to two teachers.

7. In such circumstances, judgment of the learned judge cannot be sustained and the same is set aside. Counsel for the first respondent submitted that first respondent has been working in the school for number of years and direction be given to pay salary. We are of the view, there is no obligation on the part of the Government to pay salary of the first

respondent and it is open to the first respondent to proceed against the Manager for recovery of the salary for the period he had worked. Appeal is allowed as above.

Sd/-

K.S. RADHAKRISHNAN  
Judge

Sd/-

A.K.BASHEER  
Judge

19/09/2007  
en/

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